IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Civil Action No. 7:17 cv-43

JULIE MALL, Plaintiff, **v.** **JAMES HUNTER** Defendant.	**COMPLAINT**

NOW COMES the Plaintiff, Julie Mall, by and through her undersigned counsel, and complains of the acts and omissions of the Defendant, requests a jury trial and alleges the following:

INTRODUCTION

This is an action for violation of Plaintiff's rights under the Fourth Amendment of the U.S. Constitution and for violation of her rights under the common law of North Carolina by Defendant Hunter who was sworn police officer for the Village of Bald Head Island acting under color of law.

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1343(a)(3), 1367(a), and 42 U.S.C. §§ 1983 and 1988.

VENUE

2. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in the Eastern District of North Carolina, the judicial district in which the events giving rise to the claims occurred.

I. PARTIES

1. Plaintiff is a citizen and resident of Mecklenburg County, North Carolina.

2. James Hunter, upon information and belief, is a resident of either Brunswick or New Hanover County, North Carolina. Defendant Hunter is employed by the Village of Bald Head Island in Brunswick County as a duly sworn law enforcement officer. Defendant Hunter is sued in his individual capacity as to the state law claims for conduct that was intentional, deliberate, malicious, willful, and wanton and outside the scope of his legal authority. He is not entitled to any public officer or governmental immunity that might otherwise shield him from liability. As to the Plaintiff's claim under 42 U.S.C. § 1983, Defendant Hunter is sued for conduct taken under color of state law that violated the Fourth Amendment of the United States Constitution which is applicable to Defendant Hunter pursuant to the Fourteenth Amendment. On the federal claim, Defendant Hunter is sued in his individual capacity for placing Plaintiff under arrest and using force that was objectively unreasonable and for malicious prosecution.

II. FACTS

3. On July 26, 2015, Plaintiff, her husband Scott, their son and daughter, and Plaintiff's niece, Stephanie Phelps, were on a week's vacation at Bald Head Island, NC.

4. After a dinner in honor of Ms. Phelps' birthday at which Plaintiff and her husband each had a glass of wine, the family drove a golf cart from their rental house at the corner of Muscadine Wynd and Palm Court to an entrance to the beach which was approximately two blocks from their rental cottage.

5. The golf cart was experiencing battery problems which caused it to operate more slowly than usual.

6. The Mall family including Ms. Phelps arrived at the beach around 7:30 pm and left the beach shortly after sunset at approximately 8:30 pm.

7. While at the beach, the family took dozens of pictures of the family members, of the children playing, and of the setting sun.

8. Shortly after sunset, the Mall family returned to the golf cart.

9. The Mall's eleven-year-old son asked if he could steer the golf cart back to the house, and Scott Mall allowed him to steer while he operated the power and brake pedals.

10. Plaintiff sat on the outside of the front seat with her husband in the middle and their son behind the steering wheel.

11. Ms. Phelps, the daughter, and the family dog sat in the rear facing seat of the cart.

12. As the cart approached Muscadine Wynd, a golf cart with a flashing blue light approached their cart.

13. Defendant Hunter and Officer Robert Miller came to the Mall's golf cart and in loud and hostile voices began to berate the family.

14. Defendant Hunter barked loudly: "How old is this kid, are you guys drinking? I could take you to court for child abuse."

15. Because of the actions of Defendant Hunter and Officer Miller, the Mall's son burst into tears and cried hysterically.

16. Defendant Hunter demanded that the Malls produce identification. Since they had not carried their identification for their two block trip to the beach, Scott Mall and Stephanie Phelps took the distraught children to their nearby house, and Scott Mall retrieved his and his wife's identification.

17. Prior to the departure of the family members, Plaintiff Mall had tried to defuse the situation, by suggesting that they issue a citation to her or her husband for having an underage child behind the wheel of the golf cart. She also remarked to Defendant Hunter that he should be ashamed of himself for screaming at her children.

18. Defendant Hunter then falsely stated to Plaintiff Mall that she and her husband were breaking even more laws by not carrying their identification and that it was against the law to be anywhere in North Carolina without identification.

19. After Scott Mall returned with the identification, Defendant Hunter and Officer Miller discovered for the first time that neither of them had a citation book, and they radioed for other officers to bring a citation book.

20. Because the Bald Head mosquitoes were out in force, Scott Mall then drove the golf cart several hundred yards to the house to get bug spray for himself and his wife while they waited for the citation to be issued.

21. Immediately after Scott Mall departed at least three Bald Head police vehicles arrived and blocked the road while the officers milled around.

22. Plaintiff Mall who had been standing in the median of the road, walked from the median to speak with Defendant Hunter about the ongoing police process and how long it would take.

23. Defendant Hunter barked that she should return to her golf cart, apparently unaware in his anger and confusion that Scott Mall had driven the cart to their cottage get bug spray.

24. Plaintiff Mall then asked Defendant Hunter how long it would take to complete the process of writing a citation, and Defendant Hunter again ordered her to the absent golf cart.

25. When Plaintiff Mall failed to follow up with this impossible request, Defendant

Hunter grabbed Plaintiff Mall by her right arm and twisted it behind her. At this point, Scott Mall, who had been absent for approximately five minutes, returned and the Mall's family dog became very agitated and began to bark and howl as he saw his owner assaulted and battered.

26. When Plaintiff Mall then called out for her husband, Defendant Hunter shoved her to the ground, put his knees on her back, and handcuffed the 5-foot-4-inch, 125 pound Plaintiff.

27. When Scott Mall saw that Defendant Hunter was grabbing and assaulting his wife, he used his phone to record a short video of the Defendant's action. The other officers stood watching Hunter grab and assault the Plaintiff.

28. Plaintiff Mall was then transported in a police vehicle to the Bald Head Public Safety building where Defendant Hunter again assaulted Plaintiff by grabbing her by both ankles and attempting to yank her out of the vehicle.

29. An unidentified officer interceded, stopped the assault, and assisted Plaintiff, who had lost her shoes during the assault, to hobble barefoot into the building.

30. Plaintiff Mall remained in the building for approximately an hour and a half while officers watched a television program featuring nude women running through a forest.

31. Plaintiff Mall was then told that she would be transported to Bolivia, the site of the Brunswick County jail and a magistrate's office.

32. She was not advised as to what charges were being levied against her that would lead to her transportation to Bolivia.

33. Plaintiff Mall was then placed on the ferry to Southport in handcuffs with a life vest simply thrown over her head.

34. Upon her arrival to Bolivia, Defendant Hunter falsely stated to the magistrate that Plaintiff Mall was intoxicated and disruptive, blocked traffic, challenged the 6-foot-3-inch officer to a fight, and refused to surrender her hands to be handcuffed.

35. Based on Defendant Hunter's false testimony and false police report, Plaintiff Mall was charged with being intoxicated and disruptive, misdemeanor child abuse, and resisting obstructing and delaying a public officer.

36. Based on Defendant Hunter's false statements, the magistrate set a $1,000 secured bond for Plaintiff's release.

37. At no time did Defendant Hunter, Defendant Miller, or any Bald Head officer or Brunswick County officer or employee administer or conduct any test to determine Plaintiff's blood alcohol level.

38. After Plaintiff Mall had been charged, she was shackled and placed in a jail cell with two other women.

39. Scott Mall arrived on a later ferry since he had not been allowed to accompany his wife and obtained the secured bond.

40. After Plaintiff was released from the jail cell she returned to the Island, where she sought medical treatment for the injuries she had sustained.

41. When the charges came on for hearing in the Brunswick County District Court, neither Defendant Hunter or Officer Miller appeared, and the charges were dismissed.

42. Some months after the dismissal of the charges, Plaintiff Mall filed an internal affairs complaint regarding her treatment by the Bald Head Island Public Safety Department.

43. After receiving an e-mail some months ago that her complaint was being investigated, she has received no substantive response to her complaint.

FIRST CLAIM FOR RELIEF
TRESPASS BY OFFICER A. False Arrest/False Imprisonment

44. Plaintiff incorporates by reference all preceding paragraphs.

45. Defendant Hunter placed Plaintiff Mall in handcuffs without legal authority, and against her will, and then kept her in handcuffs for several hours.

46. At the time Defendant Hunter twisted her arms behind her back and placed her in handcuffs, he did not advise Plaintiff Mall of the basis for his actions.

47. Defendant Hunter placed Plaintiff Mall under arrest without a warrant and without probable cause.

48. Lacking any basis for the three charges set out in Paragraph 35 above, Defendant Hunter failed to appear in court, and the false charges were dismissed.

49. As a result of Defendant Hunter's unlawful actions, Plaintiff Mall suffered physical pain and emotional suffering and has incurred medical expenses, attorney's fees, and other costs as a direct result of Defendant Hunter's misconduct.

50. Plaintiff seeks and is entitled to compensatory damages for both the injuries and damages she suffered due to Defendant Hunter's false arrest and false imprisonment.

51. Plaintiff also seeks and is entitled to recover punitive damages against Defendant Hunter individually, to the extent allowed under Chapter 1D of the General Statutes, for conduct that was intentional and malicious as well as willful and wanton.

B. Assault and Battery

52. Defendant Hunter's unauthorized seizure of Plaintiff constituted assault and battery.

53. Defendant Hunter deliberately, maliciously, and willfully used excessive force when, in anger, he first grabbed and twisted Plaintiff's arm behind her back, forced her to her knees and then to the ground and placed his knee to her back and subsequently when he grabbed her by both ankles and attempted to yank her out of the vehicle at the Public Safety Office.

54. Defendant Hunter's unlawful actions injured Plaintiff's arm, shoulder, and back. Plaintiff suffered physical pain and emotional injury and has incurred medical expenses as a direct result of Hunter's unlawful actions.

55. Plaintiff seeks and is entitled to compensatory damages.

56. Plaintiff also seeks and is entitled to recover punitive damages against Defendant Hunter individually, to the extent allowed under Chapter 1D of the General Statutes, for conduct that was intentional and malicious as well as willful and wanton.

SECOND CLAIM FOR RELIEF
Malicious Prosecution

57. Plaintiff incorporates by reference all preceding paragraphs.

58. As set out above, Defendant Hunter initiated false criminal charges against Plaintiff without probable cause and with malice. The charges were dismissed so that Defendant Hunter's actions constituted malicious prosecution.

59. Plaintiff seeks and is entitled to compensatory damages for both the injuries and damages she suffered due to Defendant Hunter's malicious prosecution of her.

60. Plaintiff also seeks and is entitled to recover punitive damages against Defendant Hunter individually, to the extent allowed under Chapter 1D of the General Statutes, for conduct that was intentional and malicious as well as willful and wanton.

61. The reasons for Defendant Hunter's stop of the golf cart because an eleven-year old was steering the cart and Plaintiff was riding on the far side of the cart did not provide a basis for Defendant Hunter's actions toward Plaintiff Mall as set out herein.

62. Plaintiff Mall made no effort to resist the arrest which occurred without warning as she waited for Defendant Hunter to obtain his citation book to write a citation for her or her husband for allowing their son to steer the golf cart.

63. Plaintiff Mall did not pose an immediate threat, or any threat, to Defendant Hunter or the assembled Bald Head Island safety officers.

THIRD CLAIM FOR RELIEF
Violation of the Fourth Amendment: Unlawful Seizure

64. Plaintiff incorporates by reference all preceding paragraphs.

65. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983 for violation of rights protected by the Fourth Amendment of the United States Constitution, which applies to the actions of Defendant under the Fourteenth Amendment. All actions complained of herein were taken under color of state law for purposes of 42 U.S.C. § 1983.

66. As set out above, Defendant Hunter placed Plaintiff in handcuffs without a warrant and without probable cause that she committed a crime, and kept her in those handcuffs for an extended period of time and then took her unlawfully into custody.

67. At the time Defendant Hunter placed Plaintiff in handcuffs, he twisted her arms behind her back and then forced her to the ground and kneed her in the back, apparently because Plaintiff did not move to a golf cart which was not available to her since her husband had taken the cart to their rental house.

68. Defendant Hunter seized Plaintiff without a warrant and without probable cause.

Having no basis to charge Plaintiff, took her on a unsafe ferry ride and then based on Defendant Hunter's false testimony and false police report, Plaintiff Mall was charged with being intoxicated and disruptive conduct, misdemeanor child abuse, and resisting a public officer.

69. Plaintiff was then processed and jailed.

70. These charges were dismissed when Defendant Hunter failed to appear in court.

71. His actions constituted an unreasonable and unauthorized seizure in violation of

the Fourth Amendment.

72. Defendant Hunter by his actions as set out herein is not entitled to a qualified immunity defense as a reasonable officer would have known that his conduct was unlawful.

73. By his unlawful actions, Defendant Hunter injured Plaintiff's wrist and arm, and

caused Plaintiff physical and emotional pain and suffering.

74. Plaintiff seeks and is entitled to compensatory damages for the injuries and damages she suffered due to Defendant Hunter's Fourth Amendment violation.

75. Plaintiff also seeks an award of attorney's fees pursuant to 42 U.S.C. § 1988.

76. Plaintiff also seeks and is entitled to recover punitive damages against Defendant Hunter individually in that his conduct was malicious as well as willful and wanton.

FOURTH CLAIM FOR RELIEF
Unlawful Use of Force

77. Plaintiff incorporates by reference the preceding paragraphs.

78. His actions constituted an unreasonable and unauthorized seizure in violation of the Fourth Amendment which applies to the actions of Defendant under the Fourteenth Amendment. All actions complained of herein were taken under color of state law for purposes of 42 U.S.C. § 1983.

79. The actions by Defendant Hunter in grabbing Plaintiff Mall by the arm, twisting it behind her, shoving her to the ground and putting his knee on her back and later at the Bald Head Public Safety building in grabbing her by the ankles and attempting to yank her out of a public safety vehicle caused her injury.

80. Her injuries were directly caused by Defendant Hunter's use of force and other actions which were excessive, unnecessary, deliberate, and malicious.

81. The basis for Defendant Hunter's stop of the golf cart because an eleven-year old was steering the cart and Plaintiff was riding on the far outside of the cart did not provide a basis for Defendant Hunter's assault and battery of Plaintiff Mall.

82. Plaintiff Mall made no effort to resist the arrest which occurred without warning as she asked how long it would take for Defendant Hunter to obtain his citation book to write a citation for the son steering the golf cart.

83. Plaintiff Mall did not pose an immediate threat, or any threat, to Defendant Hunter or the assembled Bald Head Island safety officers.

84. A reasonable officer would have known that his conduct was unlawful at the time of his assault and battery so that Defendant Hunter is not entitled to qualified immunity for his conduct.

85. Plaintiff also seeks an award of attorney's fees pursuant to 42 U.S.C. § 1988.

86. Plaintiff also seeks and is entitled to recover punitive damages against Defendant Hunter individually in that his conductt was malicious as well as willful and wanton.

FIFTH CLAIM OF RELIEF
§ 1983 Malicious Prosecution

87. Plaintiff incorporates by reference all preceding paragraphs.

88. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983 for violation of rights protected by the Fourth Amendment of the United States Constitution, which applies to the actions of Defendant under the Fourteenth Amendment. All actions complained of herein were taken under color of state law for purposes of 42 U.S.C. § 1983.

89. As set out above, Defendant Hunter initiated the criminal proceeding with no reasonable basis to believe that Plaintiff Mall had engaged in the criminal actions he alleged to the magistrate and without probable cause.

90. As set out above, Defendant Hunter acted maliciously as for a purpose other than

bringing Plaintiff Mall to justice.

91. When the matter came to court, Defendants did not even appear, and for lack of

any basis to prosecute Plaintiff, the case was dismissed.

92. A reasonable officer would have known that his conduct was unlawful at the time of his actions; therefore, Defendant Hunter is not entitled to qualified immunity for his conduct.

93. Plaintiff seeks and is entitled to compensatory damages for the emotional distress and damage to her reputation and the loss of liberty she suffered due to being prosecuted without probable cause in violation of the Fourth Amendment.

94. Plaintiff also seeks an award of attorney's fees pursuant to 42 U.S.C. § 1988.

95. Plaintiff also seeks and is entitled to recover punitive damages against Defendant Hunter individually in that his conduct was malicious as well as willful and wanton.

PRAYER FOR RELIEF

Wherefore, upon the trial of this matter, Plaintiff prays the Court grant her the following relief:

1. Compensatory damages on each claim;

2. Punitive damages against Defendant Hunter to the extent allowed by law;

3. The costs of this action, including an award of reasonable attorney's fees under 42 U.S.C. §1988;

4. Such other relief as the Court may deem just and proper.

This, the 23rd day of February, 2017.

/s/ John W. Gresham________
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